

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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: IN RE SEPTEMBER 11 LITIGATION : 21 MC 101 (AKH)
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: CEDAR & WASHINGTON ASSOCIATES, LLC, : 08 CIV 9146 (AKH)
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Plaintiff, :
:

- against - :
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THE PORT AUTHORITY OF NEW YORK AND NEW :
JERSEY, SILVERSTEIN PROPERTIES, INC., WORLD :
TRADE CENTER PROPERTIES LLC, SILVERSTEIN WTC :
MGMT. CO. LLC, 1 WORLD TRADE CENTER :
LLC, 2 WORLD TRADE CENTER LLC, 3 WORLD TRADE :
CENTER LLC, 4 WORLD TRADE CENTER LLC, 7 WORLD :
TRADE COMPANY, L.P., HMH WTC, INC., HOST HOTELS :
AND RESORTS, INC., WESTFIELD WTC LLC, WEST- :
FIELD, CORPORATION, INC., CONSOLIDATED :
EDISON COMPANY OF NEW YORK, AMR CORPORATION, :
AMERICAN AIRLINES, INC., UAL CORPORATION, and :
UNITED AIRLINES, INC. :

Defendants. :
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**SUBMISSION OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,
ON THE APPLICABILITY OF THE "ACT OF WAR" DEFENSE UNDER THE
COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND
LIABILITY ACT, 42 U.S.C. § 9607(B)(2)**

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New York, Inc.*

In accordance with this Court's Order dated May 25, 2012, ordering the defendants' submissions on the applicability of the "act of war" defense under 42 U.S.C. § 9607(b)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq. ("CERCLA"), by June 20, 2012, Consolidated Edison Company of New York, Inc. ("Con Edison"), hereby states as follows:

The issue of whether the CERCLA "act of war" defense applies in this case is premature as to any defendant that plaintiff Cedar & Washington Associates, LLC, asserts has CERCLA liability arising out of the 7 World Trade Center site, due to ongoing litigation in the 7 World Trade Center Property Damage case, Aegis Ins. Services, Inc. v. 7 World Trade Co., L.P., 11-4403-CV (2d Cir. filed Oct. 24, 2011), in which issues of causation related to the destruction of Con Edison's substation have not yet been finally adjudicated. For this reason, Con Edison is not taking a position on CERCLA's "act of war" defense at this time, but reserves the right to do so in the future.

Dated: June 20, 2012
Newark, New Jersey

Respectfully submitted,

BY: 

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